

ATTORNEY DOCKET NO. 07050.0009U1  
SERIAL NO. 09/899,518

**REMARKS**

In response to the Final Office Action dated November 19, 2003, Applicants respectfully submit that the finality of the Office Action is improper and a non-final Office Action should be issued in its place.

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set for in 37 CFR 1.97(c). M.P.E.P. § 706.07(a). The Office Action dated November 19, 2003 is improper because it presents a new ground of rejection. Specifically, the 35 U.S.C. § 112, second paragraph, rejection is new and there was not a claim amendment or Information Disclosure Statement submitted necessitating such a rejection.

In a series of telephone interviews with the Examiner, the finality of the Office Action was argued, and the Examiner agreed on January 5, 2004 to rescind the finality of the Office Action. A telephone call to the Examiner on February 2, 2004 revealed that the Examiner is unable to access the file in order to rescind the finality before the three (3) month time period for response expires. Therefore, the Examiner requested that this paper be filed.


Applicants now formally request the final Office Action be rescinded and a non-final Office Action be issued in its place. Applicants request written confirmation of at least such rescinding as soon as possible.

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In accordance with the Centralized Delivery and Facsimile Transmission Requirements for Patent Application Related Correspondence that went into effect December 1, 2003, this request is being filed via facsimile to 703-872-9306. A courtesy copy is also be forwarded to the Examiner at right fax number 571-273-1364.

No fee is believed to be due in connection with this request; however, if a fee is due, the Commissioner is hereby authorized to charge such fee, or credit any overpayment to Deposit Account 14-0629.

Respectfully submitted,  
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<u>CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8</u>	
I hereby certify that this correspondence, including any items indicated as attached or included, is being transmitted via facsimile transmission to: (703) 872-9306, on the date indicated below.	
 _____ Mitchell A. Katz	<u>February 5, 2004</u> _____ Date

cc: Examiner Jennine M. Brown (via facsimile 571-273-1364)